IFW

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:
Akihito HANAKI, et al.

SERIAL NO: 10/728,981 GROUP: 2661

FILED: December 8, 2003 EXAMINER:

FOR: COMMUNICATION SYSTEM, COMMUNICATION METHOD AND MOBILE STATION

LETTER

Mail Stop DD
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith is a Chinese Office Action for the Examiner's consideration. The reference cited therein has been previously filed on May 27, 2004.

Respectfully Submitted,

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I-MYS-031091 01710318822.0

中华人民共和国国家知识产权局

发文日期：2005.10.28

邮政编码：100029
北京市朝阳区裕民路12号中国国际科技会展中心A1210号
北京银龙知识产权代理有限公司
钟晶

申请号：200310118206 6

申请人：株式会社NTT都科摩

发明创造名称：通信系统、通信方法及移动台

第一次审查意见通知书

1. ☑应申请人提出的实审请求，根据专利法第35条第1款的规定，国家知识产权局对上述发明专利申请进行实质审查。
   ☐根据专利法第35条第2款的规定，国家知识产权局决定自行对上述发明专利申请进行审查。
2. ☑申请人要求以其在：
   JP 专利局的申请日 2002年12月06日为优先权日，
   专利局的申请日 年 月 日为优先权日，
   专利局的申请日 年 月 日为优先权日，
   专利局的申请日 年 月 日为优先权日，
   专利局的申请日 年 月 日为优先权日。
   ☑申请人已经提交了经原申请国受理机关证明的第一次提出的在先申请文件的副本。
   ☐申请人尚未提交经原申请国受理机关证明的第一次提出的在先申请文件的副本，根据专利法第30条的规定视为未提出优先权要求。
3. ☐经审查，申请人于：
   年 月 日提交的 不符合实施细则第51条的规定；
   年 月 日提交的 不符合专利法第33条的规定；
   年 月 日提交的
4. 审查针对的申请文件：
   ☑原始申请文件。 ☐审查是针对下述申请文件的
   申请日提交的原始申请文件的权利要求第 项、说明书第 页、附图第 页；
   年 月 日提交的权利要求第 项、说明书第 页、附图第 页；
   年 月 日提交的权利要求第 项、说明书第 页、附图第 页；
   年 月 日提交的权利要求第 项、说明书第 页、附图第 页；
   年 月 日提交的说明书摘要， 年 月 日提交的摘要附图。
5. ☐本通知书是在未进行检索的情况下作出的。
   ☑本通知书是在进行了检索的情况下作出的。
   ☑本通知书引用下述对比文献（其编号在今后的审查过程中继续沿用）：

编号	文件号或名称	公开日期（或抵触申请的申请日）
1	Y. Onoc et al: "Media scaling applied to multicast communications", Computer Communications, Vol. 21,	1998

filed on 5/27/04

6. 审查的结论性意见：
   ☐关于说明书：
   ☐申请的内容属于专利法第5条规定的不授予专利权的范围。

☐说明书不符合专利法第 26 条第 3 款的规定。
☐说明书不符合专利法第 33 条的规定。
☐说明书的撰写不符合实施细则第 18 条的规定。
☐_____

☑关于权利要求书：
☐权利要求_____不具备专利法第 22 条第 2 款规定的新颖性。
☑权利要求 1-12 不具备专利法第 22 条第 3 款规定的创造性。
☐权利要求_____不具备专利法第 22 条第 4 款规定的实用性。
☐权利要求_____属于专利法第 25 条规定的不授予专利权的范围。
☐权利要求_____不符合专利法第 26 条第 4 款的规定。
☐权利要求_____不符合专利法第 31 条第 1 款的规定。
☐权利要求_____不符合专利法第 33 条的规定。
☐权利要求_____不符合专利法实施细则第 2 条第 1 款关于发明的定义。
☐权利要求_____不符合专利法实施细则第 13 条第 1 款的规定。
☐权利要求_____不符合专利法实施细则第 20 条的规定。
☑权利要求 2 不符合专利法实施细则第 21 条的规定。
☐权利要求_____不符合专利法实施细则第 22 条的规定。
☐权利要求_____不符合专利法实施细则第 23 条的规定。
☐_____

上述结论性意见的具体分析见本通知书的正文部分。

7. 基于上述结论性意见，审查员认为：
☐申请人应按照通知书正文部分提出的要求，对申请文件进行修改。
☐申请人应在意见陈述书中论述其专利申请可以被授予专利权的理由，并对通知书正文部分中指出的不符合规定之处进行修改，否则将不能授予专利权。
☑专利申请中没有可以被授予专利权的实质性内容，如果申请人没有陈述理由或者陈述理由不充分，其申请将被驳回。
☐_____

8. 申请人应注意下述事项：
(1) 根据专利法第 37 条的规定，申请人应在收到本通知书之日起的肆个月内陈述意见，如果申请人无正当理由逾期不答复，其申请将被视为撤回。
(2) 申请人对其申请的修改应符合专利法第 33 条的规定，修改文本应一式两份，其格式应符合审查指南的有关规定。
(3) 申请人的意见陈述书和/或修改文本应邮寄或递交国家知识产权局专利局受理处，凡未邮寄或递交给受理处的文件不具备法律效力。
(4) 未经预约，申请人和/或代理人不得前来国家知识产权局专利局与审查员举行会晤。

9. 本通知书正文部分共有 3 页，并附有下述附件：
☑引用的对比文件的复印件共 1 份 18 页。☐_____

审查员：陈娴娴(9376)　　审查部门 审查协作中心
2005 年 10 月 10 日

第一次审查意见通知书正文

1．独立权利要求 1、2、9 不具备专利法第二十二条第三款规定的创造性。

独立权利要求 1 请求保护一种通信系统，对比文件 1（Y.Onoe et al:"Media scaling applied to multicast communications",Computer Communications, Vol.21,1998）公开了一种多播通信系统及方法，具体披露了以下技术特征（参见第 1229 页左栏 7-19 行，右栏 9-17 行，表 2）：在多播通信系统中，为了支持多个具有不同接收能力及服务请求的组单元，提供了一种动态 QoS 以对付临时的 CPU 过载和网络堵塞，在组群通信中，引入 QoS 级别进行控制，表 2 示例性地列出了根据网络和 CPU 能力划分的 QoS 级别（也即需要获取网络和 CPU 能力，再对其进行分类），并且能够根据动态因素比如网络和 CPU 负载等变化，从而能够在静止的多播组群中动态地组成子群，为每个子群提供适当的 QoS，例如表 2 中 Q3 接收具有最高级别的服务质量，Q1 接收最低级别的服务质量。

权利要求 1 与对比文件 1 的区别技术特征在于：权利要求 1 的通信系统中将数据传输给移动台，并且具有上述功能的部件分别称为类别管理器、接收能力收集器、确定器、传输器等，而对比文件 1 是用于计算机网络的多播通信系统。

虽然对比文件 1 的技术方案是用于计算机网络的多播通信系统，但是其解决的技术问题是多点传输过程中，如何有效利用具有不同接收能力的终端，与本发明要解决的技术问题相同，而本领域技术人员具备从相关领域寻找解决一定技术问题的能力，同时，采取一定的器件或模块实现这些相应的功能也属于本领域技术人员的常规设计手段，因此，在对比文件 1 的基础上结合本领域技术人员的常规设计能力得到权利要求 1 的技术方案是显而易见的，权利要求 1 不具备突出的实质性特点和显著的进步，也即不具备创造性。

独立权利要求 2 也请求保护一种通信系统，其与对比文件 1 的区别技术特征也仅在于：权利要求 2 的通信系统中将数据传输给与多点传送数据的种类相关连的移动台，并且相应功能的部件分别称为类别管理器、确定器、传输器等。因此，与评述权利要求 1 时理由相同（权利要求 1 中的移动台与权利要求 2 中的“与多点传送数据的种类相关连的移动台”实质相同，此处不再赘述，具体

从属权利要求 5 也不具备创造性。

从属权利要求 6 和从属权利要求 12 的附加技术特征一一对应，分别对权利要求 1、2 和 10 做了进一步限定，但是首先由移动台发起传输请求，再将多点传送数据传输到移动台，这种通信方式属于本领域技术人员的公知公用的技术，因此，当权利要求 1、2 和 10 都不具备创造性时，其相应的从属权利要求 6 和 12 也不具备创造性。

从属权利要求 7 和 8 分别对权利要求 1 和 2 做了进一步限定，对比文件 1 已经公开了（出处同上）：根据网络和 CPU 处理能力的来定义接收能力，根据传输数据的类型、帧速率等定义级别结构（即分层结构），因此，当权利要求 1 和 2 不具备创造性时，其从属权利要求 7 和 8 也不具备创造性。

从属权利要求 11 对权利要求 10 做了进一步限定，对比文件 1 公开了（出处同上）根据一些动态因素进行分类，譬如终端的处理负载等，本领域技术人员可以由此得到启示，对存储的类别进行更新，因此，当权利要求 10 不具备创造性时，从属权利要求 11 也不具备创造性。

3．权利要求 2 不符合专利法实施细则第二十条第一款的规定。

权利要求 2 请求保护一种通信系统，其技术特征均已包含在权利要求 1 中，因此，权利要求 2 的存在使得权利要求书整体不简明，不符合专利法实施细则第二十条第一款的规定。

基于上述理由，本申请的全部权利要求都不具备创造性，同时说明书中也没有记载其它任何可以授予专利权的实质性内容，因而即使申请人对权利要求进行重新组合和/或根据说明书记载的内容作进一步的限定，该申请也不具备被授予专利权的前景，审查员拟根据专利法第三十八条、专利法实施细则第五十三条第（二）项的规定驳回本申请。

THE STATE INTELLECTURAL PROPERTY OFFICE OF THE PEOPLE'S REPUBLIC OF CHINA

Applicant	***NTT DOCOMO, Inc.***	Issue Date
Agent	***Dragon International Patent Office***	**Oct. 28, 2005**
Application No.	***200310118206.6***	
Title of Invention	***OMMUNICATION SYSTEM, COMMUNICATION METHOD AND MOBILE STASTION***	

THE NOTIFICATION OF THE FIRST OFFICE ACTION

1. ■ In accordance with the Request for substantive examination, the examiner has made the examination on the above patent application based on the provision in paragraph 1, Article 35 of the PRC Patent Law.

☐ The Patent Office itself has decided to make a substantive examination for the above recited patent application based on the provision in paragraph 2, Article 35 of the PRC Patent Law.

2. ■ The applicant requested to designate the filing date of
Dec.6, 2002 in the Patent Office of JP as the priority date;
_____ in the Patent Office of ____ as the priority date;
_____ in the Patent Office of _____ as the priority date;
■ with the submission of certified copy of priority Document(s).
☐ no certified copy of priority document has been received heretofore and, according to the provisions of Article 30 of the PRC Patent Law, it is deemed that no priority right has been requested.

3. ☐ Amendment was filed on _____ by the applicant.
☐ The applicant submitted the amended text is not in conformity with Article 33 of Chinese Patent Law and is unacceptable:
☐ The amended text submitted according to Article 28 or 41 of the PCT.
☐

4. ■ Examination is made based on the Chinese translation of the original filing document.
☐ Examination is made based on the following documentations.
☐ age(s) _____ of description based on the Chinese translation of the original filing document.
Page(s) _____ of description based on the Chinese translation of attachment of international Preliminary Examination Report.
Page(s) _____ of description based on the amended documents that are submitted in accordance with Article 28 or 41 of the PCT.
Page(s) _____ of description based on the amended documents that are submitted in

accordance with Article 51 of the Chinese Patent Law.

☐ Item(s) _____ of claims based on the Chinese translation of the original filing document.

Item(s) ____ of claims based on the Chinese translation of the amended documents that are submitted in accordance with Article 19 of the PCT.

Item(s) _____ of claims based on the Chinese translation of attachment of international Preliminary Examination Report.

Item(s) _____ of claims based on the amended documents that are submitted in accordance with Article 28 or 41 of the PCT.

Item(s) _____ of claims based on the amended documents that are submitted in accordance with Article 51 of the Chinese Patent Law.

☐ Page(s) _____ of drawings based on the Chinese translation of the original filing document.

Page(s) _____ of drawings based on the Chinese translation of attachment of international Preliminary Examination Report.

Page(s) _____ of drawings based on the amended documents that are submitted in accordance with Article 28 or 41 of the PCT.

Page(s) _____ of drawings based on the amended documents that are submitted in accordance with Article 51 of the Chinese Patent Law.

☐ Abstract based on the amended documents that are submitted on _____.

5. ☐ The notification is made without conducting the search for the patent ability.

■ The notification is made under the search for the patent ability.

■ The following reference materials have been recited in this notification (their serial numbers will be referred to in the following procedure);

Serial Number	Number or Title of Reference Material	Publication Date (or Filling Date of A Conflict Patent Application)
1	" Media scaling applied to multicast communications" , Computer Communications 21 (1998), Y. Onoe, H. Tokuda	1998

6. The conclusion of the examination;

☐ In regard to the description;

- ☐ The subject matter of the present application is not accepted based on the Article 5 of the PRC Patent Law.
- ☐ The presentation of the description is not in conformity with the provision of Rule 26, Paragraph 3 of the Implementing Regulations of PRC Patent Law.
- ☐ The presentation of the description is not in conformity with the provision of Rule 18 of the Implementing Regulations of PRC Patent Law.
- ☐ The presentation of the abstract is not in conformity with Paragraph 1 of Rule 24 of the Implementing Regulations of PRC Patent Law.

■ In regard to the Claims:

- ☐ Claims ____ can not be allowed beyond the scope of the protection based on the Article

25 of the PRC Patent Law.

☐ Claims ____ do not belong to the definition of invention based on the provision of paragraph 1, Rule 2 of the Implementing Regulations of the PRC Patent Law.

☐ Claims _____ can not be allowed owing to lack of novelty based on the provision of paragraph 2, Article 22 of PRC Patent Law.

■ Claims 1 -- 12 can not be allowed owing to lack of inventiveness based on the provision of paragraph 3, Article 22 of PRC Patent Law.

☐ Claims _____ can not be allowed owing to lack of practical applicability based on the provision of paragraph 4, Article 22 of PRC Patent Law.

☐ Claims _____ can not be allowed based on the provision of paragraph 4, Article 26 of PRC Patent Law.

☐ Claims ____ can not be allowed based on the provision of paragraph 1, Article 31 of PRC Patent Law.

■ Claims 2 can not be allowed based on the provision of Rule 20 of the Implementing Regulations of the PRC Patent Law.

☐ Claims ____ can not be allowed based on the provision of Article 9 of PRC Patent Law.

☐ Claims ____ can not be allowed based on the provision of paragraph 1, Rule 13 of the Implementing Regulations of the PRC Patent Law.

The explanation of the conclusion is given in the attachment sheet in details

7. According to the above conclusion, it is considered that

☐ the applicant should amend the application documents based on the request in the Attachment Sheet.

☐ the applicant should state the season on which the application can be accepted and amend the part that is indicated not to be conformity with the requirement, otherwise the application will be rejected.

■ No subject matter in the application is accepted, said application will be rejected if the applicant does not make a statement or fail to make a statement.

☐the application will be rejected if amendment of documents submitted by applicant goes beyond the scope of patent protection

8.The applicant is drawn attention to that

(1) In accordance with the provisions of Article 37 of the Chinese Patent Law, the applicant shall submit the observation within FOUR months from the date of receiving this notification. If the applicant, without any justified reason, fails to reply within the time limit, the application shall be deemed to have been withdrawn.

(2) The applicant shall make amendments to what is not in conformity with the provisions in the text of this notification. The amended text shall be furnished in duplicate. The formality of the document should be in conformity with the relative provisions of the Guidebook for Examination.

(3) The applicant and/or his attorney could not go to the PRC Patent Office to meet the examiner if no appointment is made.

(4) **Any response and/or amended specification must be mailed or sent by hand to the receiving Department of the PRC Patent Office. Any documents that are not sent to the Receiving Department do not have legal force.**

9. The text of notification embraces 3 page(s), along with the enclosures herein:

■ 1 copies of the recited references is enclosed in page of 18

Examiner: Shanshan Chen (9376)

Sept.27, 2005

Text of the Notification of the First Office Action

1. Independent claims 1, 2 and 9 do not possess inventiveness prescribed in Paragraph 3, Article 22 of PRC Patent Law.

Independent claim 1 asks for protection for a communication system. Document 1 (Y. Onoe et al, "Media scaling applied to multicast communications", Computer Communications, Vol.21, 1998,) discloses a multicast communication system and method and further discloses following technical features (see lines 7-19 on the left column, lines 9-17 on the right column, page 1229 of the description, and Table 2): in a multicast communication system, a dynamic QoS is provided to cope with the temporary CPU overload and network congestion in order to support a plurality of different receiving capacities of group members and service requests; and in group communications, a QoS level is introduced to control these problems. Table 2 examply lists QoS levels specified according to network and CPU capacities (that is, network and CPU capacities need to be acquired first, and then QoS level may be specified), and QoS level may be changed by dynamic factors, such as network and CPU loads, in order to dynamically form subgroups in static multicast groups and provide a proper QoS for each subgroup. For example, in Table 2, Q3 receives the highest level of service quality and Q1 the lowest.

The difference of technical features between claim 1 and Document 1 are: the communication system in claim 1 transmits data to mobile stations and its functional devices are named as a category manager, a reception capability collector, a decider and a transmitter, etc., respectively, while Document 1 discloses a multicast communication system for a computer network.

Although the technical solution disclosed in Document 1 is a multicast communication system for a computer network, the technical problem to be solved is how to effectively use terminals having different receiving capabilities in a process of multi-point transmission, which is also the problem to be solved in the present invention. A person skilled in the art is capable to find a measure from a relative technical field to solve a certain technical problems, and it is a conventional design means for a person skilled in the art to uses relative devices or modules to implement the corresponding functions. Therefore, it is obvious for a person skilled in the art to

obtain the technical solution of claim 1 by combining a conventional design means on the basis of Document 1, and thus claim 1 does not have prominent substantive features and not represent a notable progress and does not possess inventiveness.

Independent claim 2 asks for protection for a communication system. The distinctive technical features of independent claim 2 from Document 1 are: the communication system in claim 2 transmits multicast data to a plurality of mobile stations in association with a type of the multicast data and its functional devices are named as a category manager, a decider and a transmitter, etc., respectively. For the same reason given to claim 1, claim 2 does not possess inventiveness either (the mobile stations in claim 1 is substantially the same as the mobile stations in association with a type of the multicast data in claim 2 and the reasons, which may refer to the previous paragraph, are omitted here).

Independent claim 9 asks for protection for a communication method corresponding to the communication system in claim 1 and their respective technical features are corresponding to each other. Based on the same reason given to claim 1, claim 9 does not possess inventiveness either.

Independent claim 10 asks for protection for a mobile station for receiving multicast data. The mobile station is the one applied to the communication system in claim 1, and its distinctive technical features from Document 1 are: claim 10 asks for protection for a mobile station having a category memory, a receiver and a selector. But a person skilled in the art may obtain a corresponding configuration of a receive party (a mobile station) from the system disclosed in Document 1 by using a conventional design means. That is, a memory for storing a category of a reception capability value and a selector for selecting a corresponding category from the received data. Therefore, it is obvious for a person skilled in the art to obtain the technical solution of claim 10 by combining a conventional design means on the basis of Document 1, and thus claim 10 does not possess inventiveness.

2. Dependent claims 3-8 and 11-12 do not possess inventiveness prescribed in Paragraph 3, Article 22 of PRC Patent Law.

Dependent claim 3 further defines claim 2. Document 1 has disclosed that (see the same article mentioned before): QoS levels are specified according to network and CPU capacities (that is, network and CPU capacities need to be acquired first, and then QoS level may be specified), and may be changed by dynamic factors, such as network and CPU loads, in order to dynamically form subgroups in static multicast groups and provide a proper QoS for each subgroup, i.e., having network and CPU capacities specified, and then specifies their QoS level. It is a conventional design means for a person skilled in the art to uses some devices, such as a reception capability collector and a notice information transmitter to implement the corresponding functions. Therefore, claim 3 does not possess inventiveness, when claim 2 referred to does not possess inventiveness.

Dependent claim 4 further defines claim 3. Document 1 has disclosed that (see the same article mentioned before): the reception capability is specified according to kind of multicast data, such as transmit two kinds of audio data packets, Left+ Right and L-R data, high-performance receivers belonging to QoS level 2 can receive the both and broadcast in stereo on the basis of the calculated L and R; low-performance receivers belonging to QoS level 1 can only receive L-R data and broadcast mono-aural sound. Therefore, dependent claim 4 does not possess inventiveness when claim 3 referred to does not possess inventiveness.

The additional technical features of **Dependent claim 5** makes a little improvement to the communication system of claim 3 by adding a notice information judger for judging whether or not a notice information is transmitted, which, however, is a conventional design means for a person skilled in the art. Therefore, dependent claim 5 does not possess inventiveness, when claim 3 referred to does not possess inventiveness.

The additional technical features of **Dependent claim 6** and **Dependent claim 12** correspond to each other and further define claims 1, 2 and 10 respectively. But this communication mode is a well-known knowledge for a person skilled in the art that a mobile station firstly issues a transmission request and then a multicast data is transmitted to the mobile station. Therefore, dependent claims 6 and 12 do not possess inventiveness when claims 1, 2 and 10 referred to do not possess inventiveness.

Dependent claims 7 and 8 further define claims 1 and 2 respectively. Document 1 has disclosed (see the same article mentioned before) that the reception capability is defined by the processing capability of network and CPU and the hierarchical structure is defined by type and frame rate of the transmitted data and the like. Therefore, dependent claims 7 and 8 do not possess inventiveness when claims 1 and 2 referred to do not possess inventiveness.

Dependent claim 11 further defines claims 10. Document 1 has disclosed (see the same article mentioned before) that categories are defined by dynamic factors such as the processing loads of a terminal, etc., and a person skilled in the art may obtain an inspiration from the disclosure to update the stored categories. Therefore, dependent claim 11 does not possess inventiveness when claim 10 referred to does not possess inventiveness.

3. Claim 2 is not in conformity with the provision of Paragraph 1, Rule 20 of the Implementing Regulations of PRC Patent Law.

Claim 2 asks for protection for a communication system, and its technical features are involved in claim 1. Therefore, claim 2 is not in conformity with the provision of Paragraph 1, Rule 20 of the Implementing Regulations of PRC Patent Law since the present of claim 2 causes the whole claims of the application not to be concise.

Based on the above reasons, all claims of the application do not possess inventiveness and no subject matter in the description can be granted for a patent right. Therefore, the application has no prospect of being granted a patent right even if the applicant recombines and/or further defines, the claims according to the disclosure in the description. The examiner will rejects the application according to the provision of Article 38 and the provision of Item 2, Rule 53 of the Implementing Regulations of PRC Patent Law.